

TRUSTEESHIP

What You Need to Know

Who Needs a Trustee?

- Adults (over the age of majority) who do not have capacity to manage their own finances (called a “Represented Adult”)
- In this document, the term “Adult” refers to the Represented Adult who is the subject matter of a trusteeship application
- Adult must live in Alberta, or not live in Alberta but own real estate in Alberta

Are Less Intrusive Measures Available?

- Enduring Power of Attorney
 - Does the adult have capacity to create and sign a Power of Attorney?
 - If so, then Trusteeship is not required unless the Power of Attorney does not grant all financial authorities required to assist the Adult
- Informal Trusteeship
 - If the Adult does not have many assets, and only requires assistance managing government benefits and expenses, informal trusteeship may be sufficient
 - Cannot deal with investments or real estate
 - Usually requires the informal trustee to sign paperwork with AISH, etc., confirming that they will exercise their authority to help the Adult and not for their own purposes

Who is Eligible to be a Trustee?

A Trustee must meet all of these conditions:

- An adult over the age of 18;
- Must consent to acting as a trustee to the adult;
- Has the ability to act as a trustee to the adult (meaning they have capacity themselves);
- Reside in Alberta (otherwise will require bond)
- Cannot have filed for bankruptcy

Timing of Application

- When the adult has lost capacity (as determined by Capacity Assessment Report) to make reasonable financial decisions
- In the case of a minor child who will not have capacity once they reach the age of majority, an application can be made once the child has turned 17 (desk applications can take several months up to 1 year)

Types of Applications

- Desk
 - Uncontested basis
 - No Court attendances required; paperwork is submitted to Office of Public Trustee and once Review Officer has met with Adult, report will be filed with remainder of application with Clerk of the Court
 - Can take several months (or longer) for Order to be granted, depending on where Adult resides
- Hearing
 - Requires Court attendance (at least one, possibly more, depending on circumstances)
 - Ordinary:
 - Requires min. 1 month notice of application to be served on interested parties
 - Urgent:
 - When imminent risk of serious financial losses to Adult
 - Can proceed on min. 2 days' notice of application
 - Initially, temporary order granted for period up to 90 days, with second Court attendance required to obtain permanent order
 - Order can be granted much faster, but process costs more (due to Court attendance)
- If anyone objects to application, the matter must proceed to a Hearing, even if started as desk application, for Court to determine what is in the adult's best interests

What's Involved?

Powers of Trustees

- Owning and managing real estate
- Making investment decisions
- Filing Adult's income taxes
- Managing government benefits and other sources of income, and paying monthly and non-recurring expenses

- Maintaining an account for the Adult at a residential care facility
- Managing any deposit accounts the Adult has access to

Responsibilities

- Making efforts to determine if Adult has a Will
- Acting in best interests of Adult and in good faith at all times
- Keeping the Adult's property separate from Trustee's
- Paying expenses reasonably required for the Adult's education, care and support
- Managing the Adult's assets, liabilities and income with the same care, skill and diligence of a reasonable person would use to manage their own resources
- Exercising powers to help Adult's spouse/partner, or minor or dependent children (if appropriate and applicable)
- Keeping good records of all transactions in and out of Adult's accounts (may require use of a bookkeeper to ensure monthly and annual statements are created for submission to Court at time that Examination of Accounts is required)
- Complying with the terms of the Trusteeship order and the Trusteeship plan

Terms of Order

- Must have special authority from Court as specified in the Order to do any of the following:
 - Deal with real estate (buy / sell / lease / mortgage, etc.)
 - Maintain a deposit account the Adult can access (trustee not responsible to account for how adult spends funds in deposit account if Order authorizes, subject to
 - Order state maximum amount to be deposited monthly, and
 - Maximum balance to be maintained at any given time
 - Maintain assets jointly between Adult and a third party (including trustee)
 - Authorize gifts from the Adult's property to third parties, *so long as*
 - Adult has sufficient resources that s/he will not require the funds being gifted, and
 - the trustee believes the Adult would have made the gift themselves if they had capacity
 - Authorize payments to the trustee or member of the trustee's family, for example:
 - For support purposes, if trustee is spouse/partner, or
 - For payment of expenses Adult would otherwise pay to a third party (such as rent, etc.)
- If more than 1 trustee is appointed, the Order must specify whether the trustees will act:
 - Jointly (*this is the default in the legislation*)

- Jointly and separately (*meaning both confer on financial decisions and have access to all financial records, but only 1 trustee is required to communicate a decision at any given time*)
- Separate authorities are granted to each trustee (*with no overlap of authority between them*)
- Court may also impose any conditions or limitations on trustee's power as it deems appropriate
- Compensation
 - A trustee is entitled to compensation for acting as a trustee and managing the Adult's property, either:
 - In the amount prescribed by the Regulations (2.5% of all funds received and paid out) or
 - In an amount specified by the Court
 - A trustee cannot receive compensation until authorized by the Court
 - The Court can reduce or remove the trustee's entitlement to compensation if there is evidence that the trustee is not properly discharging his/her duties

Getting Started

- An application to the Court is required
 - The first step is to have a Capacity Assessment Report completed by the Adult's physician, psychologist or a qualified assessor
 - Costs – up to \$500 for Guardianship or Trusteeship; up to \$700 if combined Guardianship and Trusteeship
 - Complete all of the Court forms
 - Complete Background check forms
 - Pay the filing fee of \$250.00 to the Government of Alberta
- A copy of the application must be submitted to the Office of the Public Trustee
- A Review Officer will meet with Adult to go over the application with them to explain it and provide a report to the Court that the application is in the best interests of the adult
- In order to grant a Trusteeship Order, the Court must be satisfied that:
 - The adult does not have the capacity to make decisions about financial matters listed in order for themselves
 - Less intrusive and less restrictive supports are not suitable
 - It is in the best interests of the adult to have a trustee (and that the person applying to be appointed as the trustee will act in the best interests of the adult)

Review of Trusteeship

- A Trusteeship order will specify whether the order must be reviewed by a specific date or after a specific period of time has passed, or only if there is a change in the Adult's circumstances in the future
- A Trusteeship order can also be reviewed if the Trustee's ability or suitability to act in this capacity changes in the future
- The Adult's capacity has changed, and requires more, less, different, or no further assistance in managing their finances
- The Adult, trustee, or another interested person may apply to the Court to review the Trusteeship Order at any time upon a minimum of one (1) month's notice

Ending Trusteeship

- The Trusteeship Order stays in place until it is terminated by the Court, or the adult dies
- The Court can cancel or terminate a Trusteeship Order if:
 - The Adult no longer needs a trustee (has regained capacity sufficiently to make their own personal decisions), or
 - The trustee needs to be replaced
- A trustee might need to be replaced if
 - They no longer wish to be a trustee
 - They are not following the Order
 - They have acted improperly or in a manner that has or might endanger the Adult's property
 - They are no longer suitable to be a trustee (possibly the trustee has lost capacity, or has died)
 - The trustee is guilty of breach of trust
 - It is in the adult's best interests to name a new trustee

Examination of Accounts and Approval by Court

Review Period

- The Trusteeship Order will specify that an application for Examination of Accounts must be provided:
 - within a certain time period after the Order has been granted, or
 - when a change of circumstances arises
- If there is no specified review period, probably want to bring a voluntary application within every 10 years or less to close off an accounting period

- Trustee's responsibility to keep track of review periods and ensure an application for Examination of Accounts is submitted as soon as reasonably possible after a review period ends

What's Required?

- An inventory of all of the Adult's assets for the period covered by the accounting (starting and ending balances)
- Copies of the most recent statement of account for each bank account or investment identified in the inventory, along with copies of any certificates of title for any real estate interests owned by the Adult (if applicable)
- A statement of complete transactions that contains:
 - the date of the transaction;
 - the name of the other party to the transaction;
 - if money is received or paid in the transaction:
 - the amount
 - a description of the transaction, and
 - the account into which the money is deposited or from which the money is paid or advanced
 - if money is transferred between accounts in the transaction, the amount transferred and the accounts affected
 - a brief description of any items, services or property acquired in, disposed of or lent in the transaction
 - if the transaction is a gift, including a charitable donation, made by the trustee on behalf of the represented adult
 - a statement to that effect, and
 - the estimated fair market value of the gifted property, if the property is not money
 - receipts or invoices for all transactions involving the payment of \$500 or more.

Things to Remember

- If you are appointed as a trustee, keep good records of your transactions on behalf of the Adult, including receipts and statements.
- A record of all transactions during a trusteeship period is required for any application to review or terminate a Trusteeship Order, or for an application for Examination of Accounts
- If anything happens to you while you are acting a trustee to someone else, an authorized person might need to bring a review application on your behalf to review the period of time you acted as a trustee to the adult and then have you removed as a trustee
- If there is more than one trustee appointed, there is a need to ensure both trustees are informed and consulted at all times, even if appointed as joint and separate trustees

- If one trustee dies, but there is a joint trustee or an alternate trustee appointed in the Order, a review application is not necessary. In that instance, a letter must be sent to the Court and to the Office of the Public Trustee and Trustee, advising of the change of circumstances
- Trustees are not entitled to any compensation for performing their duties
- However, Trustees are entitled to be reimbursed for their out-of-pocket expenses incurred in the course of carrying out their duties, including for mileage if they run errands or take the adult to appointments, etc.